

Box Elder County, Utah Resource Management Plan Amendment and Clarification Specific to Certain Non-Wilderness Quality Lands Proposed By Environmentalist Groups for Wilderness Management and Designation

I. Scope and Authority

Box Elder County asserts planning authority over all lands and natural resources within its geographical boundaries even though the United State Government owns a substantial portion of those lands and resources. Like any other landowner in the County, the United States Government is subject to Box Elder County's land and natural resource plans and policies to the maximum extent, provided such plans and policies of Box Elder County are consistent with federal law. This is so for the following reasons:

1. The United States Constitution at Article I Section 8 Clause 17 grants Congress the power of exclusive legislation only over the District of Columbia and other places purchased by the consent of State Legislatures for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings. The Utah Legislature reinforced this principle at Utah Code 63L-1-201, by ceding jurisdiction to the United States only over those lands used for the purposes spelled out in the U.S. Constitution Article I Section 8 Clause 17. No such lands are located in Box Elder County. Therefore, there is no constitutional basis for the Federal Government to assert exclusive jurisdiction over any federal land in Box Elder County. As the Tenth Amendments to the United States Constitution states:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

2. Utah Code § 17-27a-401(4) allows Box Elder County to "define the county's local customs, local culture, and the components necessary for the county's economic stability." (Emphasis added.) Subsection (5) of that statute gives the County sole discretion, subject to certain restrictions not relevant here (see 17-27a-403(2)), to "determine the comprehensiveness, extent, and format of the general plan." In other words, Box Elder County has the legal right to make its General Plan broad and comprehensive to address all land use issues on federally owned ground in Box Elder County. Under Utah Code § 17-27a-401(2), Box Elder County's general plan may provide for:

- (a) the health, general welfare, safety, energy conservation, transportation, prosperity, civic activities, aesthetics, and recreational, educational, and cultural opportunities;
- (b) the reduction of the waste of physical, financial, or human resources that result from either excessive congestion or excessive scattering of population;
- (c) the efficient and economical use, conservation, and production of the supply of:
 - (i) food and water; and
 - (ii) drainage, sanitary, and other facilities and resources;
- (d) the use of energy conservation and solar and renewable energy resources;
- (e) the protection of urban development;
- (f) the protection or promotion of moderate income housing;

- (g) the protection and promotion of air quality;
- (h) historic preservation;
- (i) identifying future uses of land that are likely to require an expansion or significant modification of services or facilities provided by each affected entity;
- and
- (j) an official map.

3. County ordinance powers do carry the weight or force of law, but county ordinance making authority does not extend to federally owned lands. Utah Code 17-27a-304. County plans are advisory and do not of themselves carry the weight or force of law, like a county ordinance does. Utah Code § 17-27a-405. But County planning authority is broad enough to cover federally owned lands. See the code provisions in the foregoing section.

4. It is federal law that gives county plans their legal clout. Not only does the Constitution at Article I, Section 8 Cl. 17 and the Ninth and Tenth Amendments leave the federal government powerless to assert exclusive jurisdiction over federal lands in Box Elder County, let alone own them in perpetuity, but federal statutes and regulations require that federal land use plans shall be consistent and done in coordination with state and local government plans for Forest and BLM lands. The following federal statutes and related regulations require federal agencies to honor, respect and give due consideration to Box Elder County's *General Plan*:

National Environmental Policy Act, 42 U.S.C. §§ 4321, *et seq.*, and related regulations:

- | | |
|-------------------------------|--|
| 42 U.S.C. § 4331(a): | Continuing policy of the Federal Government to work in cooperation with State and local governments to carry out policies of NEPA. |
| 40 C.F.R. § 1501.2(d) (2) | Federal agencies to consult early in the EIS process with state and local agencies. |
| 40 C.F.R. § 1501.7(a) (1) | Federal agencies to involve state and local agencies in the EIS scoping process. |
| 40 C.F.R. § 1502.16(c) | EIS to discuss possible conflicts between proposed action and state and local land use plans. |
| 40 C.F.R. § 1503.1(a) (2) (i) | Federal agencies developing EIS have duty to invite comments from state and local agencies authorized to develop and enforce environmental standards. |
| 40 C.F.R. § 1504.4(a) | Federal agencies must assess and consider such comments and respond thereto. Possible responses include modifying alternatives including the proposed action, developing alternatives not already considered, and improve and modify their analyses. |

Federal Land Policy Management Act, 43 U.S.C. §§ 1701, *et seq.*, and related regulations:

- | | |
|------------------------|--|
| 43 U.S.C. § 1712(c)(9) | BLM shall (1) coordinate land use planning and management activities with land use planning and management programs of state and local governments, (2) assure consideration is given to |
|------------------------|--|

germane state and local plans, (3) assist in resolving, to the extent practical, any inconsistencies between federal plans and state and local plans, (4) provide for meaningful involvement of state and local governmental officials in developing land use programs and land use decisions, and (5) receive advice from state and local governmental officials on the development and revision of land use plans and guidelines. (6) BLM's plans shall be consistent with state and local plans to the maximum extent consistent with federal law and FLPMA's purposes.

Similar regulatory requirements concerning the duty to coordinate with state and local governments and be consistent with state and local government land use plans are found in 40 C.F.R. §§ 1601.0-2, 1601.0-8, 1610.3-1, 1610.3-2, 1610.4-1, 1610.4-2, 1610.4-4, 1610.4-7, and 1610.4-9.

5. Box Elder County is a political subdivision of a state whose policy it is "to claim and preserve by lawful means the rights of the state and its citizens to determine and affect the disposition and use of federal lands within the state as those rights are granted by the United States Constitution, the Utah Enabling Act, and other applicable law." Utah Code 63C-4-105(1).

6. Whenever the Governor's state planning coordinator gets involved in federal land use planning in Box Elder County, he is required by law to incorporate the plans, policies, programs, processes, and desired outcomes of Box Elder County, to the maximum extent consistent with state and federal law without infringing upon the authority of the governor. Utah Code 63J-4-401(3) (a).

II. Subject Lands

This resource management plan amendment and clarification applies to those certain areas of land in Box Elder County owned and managed by the United States Bureau of Land Management ("BLM") including but not limited to sections which an organization by the name of the Utah Wilderness Coalition ("UWC") has purported to include in its so-called "Citizen's Proposal for Wilderness in Utah", for their so-called Great Basin, North Region, according to the map thereof set forth in the UWC internet web site, address <http://www.protectwildutah.org/proposal/index.html> as it existed on January 17, 2011, listing the following areas in Box Elder County.

(township and ranges are needed for each of these)

Little Goose Creek

Located in part or all of (list all inclusive townships and ranges) in Box Elder County

Grouse Creek Mountains North

Located in part or all of (list all inclusive townships and ranges) in Box Elder County

Grouse Creek Mountains South

Located in part or all of (list all inclusive townships and ranges) in Box Elder County

Bald Eagle Mountain

Located in part or all of (list all inclusive townships and ranges) in Box Elder County

Central Pilot Range

Located in part or all of (list all inclusive townships and ranges) in Box Elder County

Pilot Peak

Located in part or all of (list all inclusive townships and ranges) in Box Elder County

Crater Island West

Located in part or all of (list all inclusive townships and ranges) in Box Elder County

Crater Island East

Located in part or all of (list all inclusive townships and ranges) in Box Elder County and Tooele County

Newfoundland Mountains

Located in part or all of (list all inclusive townships and ranges) in Box Elder County

Grassy Mountains North

Located in part or all of (list all inclusive townships and ranges) in Box Elder County and Tooele County

For purposes of this plan amendment and clarification, all of the above-described lands are collectively referred to herein as the Non-WSA Proposed Wilderness Regions, or “Regions”, and are illustrated more fully in the map attached hereto.* Any reference hereafter to the term “Non-WSA Proposed Wilderness Regions” shall refer to any and all of the above-described land areas.

*See Attachment A

DISCLAIMER

These Non-WSA Proposed Wilderness Regions have always been managed for multiple use. They have never been managed as de facto wilderness nor managed for any alleged wilderness characteristics (there are none) nor for so-called Wild Lands (they are not). The current BLM Resource Management Plan for the Salt Lake Field Office Planning Area (Salt Lake RMP) has never treated these Non-WSA Proposed Wilderness Regions as anything other than regular multiple use areas, and nowhere in the current Salt Lake RMP is there any mention or recognition whatsoever of any proposal that these areas be treated as wilderness or managed for alleged wilderness characteristics, much less that they possess any wilderness values. Moreover, because part of the Salt Lake Planning Area is within the fly space relevant to the Utah Test and Training Range (UTTR), a Congressional moratorium is in place which bars any revision to the Fillmore RMP within the foreseeable future. Thus, it is impossible for the BLM to justify de facto wilderness management of the Non-WSA Proposed Wilderness Regions under the guise of an RMP amendment.

Therefore, the fact that Box Elder County is amending and clarifying its general plan to re-affirm its long-standing pro-multiple use and anti-wilderness policy and position with respect to any of these Non-WSA Proposed Wilderness Regions, does not imply that Box Elder County recognizes any validity, seriousness or merit to any of the pro-wilderness proposals made by private groups for any of the subject areas; nor does Box Elder County concede or imply in any way that any of these regions possess any wilderness quality lands or resources. They do not.

Accordingly, this plan clarification is a cautionary action by Box Elder County to guard against any illegal attempt by the BLM to use the illegal December 23, 2010 Order 3310 of the Secretary of the Interior to assert de-facto wilderness management over of the Non-WSA Proposed Wilderness Regions. Box Elder County expects full compliance by the BLM with the consistency requirements of FLPMA and that the BLM honor these policies of Box Elder County when considering how to manage the Non-WSA Proposed Wilderness Regions.

III. Resource Management Plan

1. Multiple Use Management.

Multiple use and sustained-yield management principles shall be applied in public land use and natural resource planning and management in Box Elder County, including throughout the Non-WSA Proposed Wilderness Regions. This is how the citizens of Box Elder County are best served. Multiple-use and sustained-yield management means that land owners and land management agencies should develop and implement management plans and make other resource-use decisions that:

- (A) achieve and maintain in perpetuity a high-level annual or regular periodic output of agricultural, mineral and various other resources from public lands in Box Elder County,
- (B) support valid existing transportation, mineral, and grazing privileges in Box Elder County at the highest reasonably sustainable levels;
- (C) are designed to produce and provide the desired vegetation for the watersheds, timber, food, fiber, livestock forage, and wildlife forage, and minerals that are necessary to meet present needs and future economic growth and community expansion in Box Elder County without permanent impairment of the productivity of the land;
- (D) meet the recreational needs and the personal and business-related transportation needs of the citizens of Box Elder County by providing access throughout the county;
- (E) meet the needs of wildlife, provided wildlife populations are kept at a reasonable minimum so as to not interfere with originally permitted AUM levels under the Taylor Grazing Act;
- (F) protect against direct and substantial impacts to nationally recognized cultural resources, both historical and archaeological;
- (G) meet the needs of economic development;
- (H) meet the needs of community development; and
- (I) provide for the protection of water rights and reasonable development of additional water rights;

2. "Wilderness Characteristics" management.

(A) No public lands in Box Elder County, including none of the Non-WSA Proposed Wilderness Regions should be managed for so-called "wilderness characteristics." No public lands in Box Elder County, including none of the Non-WSA Proposed Wilderness Regions should be managed as if they are or may become wilderness. Such management of non wilderness and non WSA public lands, circumvents the statutory wilderness process and is inconsistent with the multiple-use and sustained-yield management standard that applies to all such lands.

1. Achieve and Maintain a Continuing Yield of Energy and Mineral Resources In The Non-WSA Proposed Wilderness Regions At The Highest Levels

- Development of the solid, fluid and gaseous mineral resources in the Regions is an important part of the economy of Box Elder County.
- Box Elder County recognizes that it is technically feasible to access mineral and energy resources while preserving or, as necessary, restoring non-mineral and non-energy resources.
- All available solid, fluid and gaseous mineral resources in the Non-WSA Proposed Wilderness Regions should be seriously considered for their contribution or potential contribution to the Box Elder County economy.
- Lands shown to have reasonable mineral potential in the Non-WSA Proposed Wilderness Regions should be open to oil and gas leasing with reasonable stipulations and conditions that will protect the lands against unreasonable and irreparable damage to other significant resource values. This should include reasonable and effective mitigation and reclamation measures, and bonding for such, where necessary.
- The waste of fluid and gaseous minerals within developed areas, except for those necessary for production, such as flaring, should be prohibited.
- Any prior existing lease restrictions in the Non-WSA Proposed Wilderness Regions that are no longer necessary or effective should be modified, waived or removed.
- Restrictions against surface occupancy should be modified, waived or, if necessary, removed where it is shown that directional drilling is not ecologically necessary, not feasible from an economic or engineering standpoint, or where it is shown that directional drilling will, in effect, sterilize the mineral and energy resources beneath the area.
- Applications for permission to drill that meet standard qualifications, including reasonable and effective mitigation and reclamation requirements, should be expeditiously processed and granted.
- Any moratorium that may exist against the issuance of additional mining patents and oil and gas leases in the Non-WSA Proposed Wilderness Regions should be carefully evaluated for removal.

3. Achieve and Maintain Livestock Grazing In The Non-WSA Proposed Wilderness Regions At The Highest Reasonably Sustainable Levels

- Domestic livestock forage in the Non-WSA Proposed Wilderness Regions, expressed in animal unit months, for permitted active use, as well as the wildlife forage included in that amount, should be no less than the maximum number of animal unit months sustainable by range conditions in grazing districts and allotments in the Non-WSA Proposed Wilderness Regions, based on an on-the-ground and scientific analysis.
- Where once-available grazing forage in the Non-WSA Proposed Wilderness Regions has succeeded to pinion, juniper and other woody vegetation and associated

biomass, or where rangeland health in the Non-WSA Proposed Wilderness Regions has suffered for any other reason, a vigorous program of mechanical treatments such as chaining, logging, seeding, lopping, thinning and burning and other mechanical treatments should be applied to remove this woody vegetation and biomass and stimulate the return of the grazing forage to its historic levels for the mutual benefit of livestock, wildlife and other agricultural industries in the Non-WSA Proposed Wilderness Regions.

- Box Elder County regards the land which comprises the grazing districts and allotments in the Non-WSA Proposed Wilderness Regions as still more valuable for grazing than for any other use which might exclude livestock grazing. Such other uses include but are not limited to conversion of AUM's to wildlife or wilderness uses. Accordingly, it is Box Elder County's plan that animal unit months in the Non-WSA Proposed Wilderness Regions not be relinquished or retired in favor of conservation, wildlife or other uses.
- Box Elder County recognizes that from time to time a bona fide livestock permittee in the Non-WSA Proposed Wilderness Regions, acting in good faith and not to circumvent the intent of the BLM's grazing regulations, may temporarily cease grazing operations without losing his or her permitted AUM's. However, BLM-imposed suspensions of use or other reductions in domestic livestock animal unit months in the Non-WSA Box Elder County Non-WSA Proposed Wilderness Regions should be temporary and scientifically based on rangeland conditions.
- The transfer of grazing animal unit months ("AUMs") to wildlife for supposed reasons of rangeland health is opposed by Box Elder County as illogical. There is already imputed in each AUM a reasonable amount of forage for the wildlife component.
- Any grazing animal unit months that may have been reduced in the Non-WSA Proposed Wilderness Regions due to rangeland health concerns should be restored to livestock when rangeland conditions improve. They should not be converted to wildlife use.

4. Manage the Watershed in The Non-WSA Proposed Wilderness Regions To Achieve and Maintain Water Resources At The Highest Reasonably Sustainable Levels

- All water resources that derive in the Non-WSA Proposed Wilderness Regions are the property of the State of Utah. They are owned exclusively by the State in trust for its citizens.
- As a political subdivision of the State, Box Elder County has a legitimate interest in seeing that all reasonable steps are taken to preserve, maintain and, where reasonable, as determined by Box Elder County, develop those water resources.
- With increased demands on water resources brought on by population increases in the Colorado River drainage area, and with recent drier precipitation trends which call into question, in the minds of some, whether the climate of the Colorado River drainage area is changing, it is more important now than ever that management practices be employed in the Non-WSA Proposed Wilderness Regions to restore, maintain and maximize water resources there. Where water resources in the Non-WSA Proposed

Wilderness Regions have diminished because once-existing grasses have succeeded to pinion, juniper and other woody vegetation and associated biomass, a vigorous program of mechanical treatments should be applied to promptly remove this woody vegetation and biomass, stimulate the return of the grasses to historic levels, and thereby provide a watershed that maximizes water yield and water quality for livestock, wildlife, and human uses.

- Box Elder County's strategy and plan for protecting the Non-WSA Proposed Wilderness Regions watershed is to deter unauthorized cross-country OHV use in the Non-WSA Proposed Wilderness Regions. The best way to achieve this is to give OHV users a reasonable system of roads and trails in the Non-WSA Proposed Wilderness Regions on which to legitimately operate their OHVs. Closing the Non-WSA Proposed Wilderness Regions to all OHV use will only spur increased unauthorized cross-country OHV use to the detriment of the Non-WSA Proposed Wilderness Regions watershed.

- Accordingly, all roads and trails in the Non-WSA Proposed Wilderness Regions which historically have been open to OHV use, as identified on the County Road Map, should remain open.

5. Achieve and Maintain Traditional Motorized Access To Outdoor Recreational Opportunities Available in the Non-WSA Proposed Wilderness Regions

- Traditionally, citizens of Box Elder County and visitors have enjoyed many forms of outdoor recreation in the Non-WSA Proposed Wilderness Regions, such as hunting, fishing, hiking, family and group parties, family and group campouts and campfires, rock hounding, OHV travel, geological exploring, pioneering, parking their RV, or just plain touring in their personal vehicles. Such activities are important to preserving the character and tradition of Box Elder County.

- Public land outdoor recreational access in the Non-WSA Proposed Wilderness Regions should not discriminate in favor of one particular mode of recreation to the exclusion of others. Traditionally, outdoor recreational opportunities in the Non-WSA Proposed Wilderness Regions have been open and accessible to working class families, to families with small children, to the sick and persons with disabilities, to the middle aged and elderly, to persons of different cultures for whom a "primitive solitary hike" may not be the preferred form of recreating, and to the economically disadvantaged and underprivileged who lack the money and ability to take the time off work necessary to get outfitted for a multi-day "primitive hike" to reach those destinations. All of society should not be forced to participate in a "solitude experience" or a "primitive experience" as the one and only, or primary, mode of outdoor recreation in the Non-WSA Proposed Wilderness Regions. Any segment of society, for that matter, that wants to recreate in the Non-WSA Proposed Wilderness Regions, should have motorized access to that recreation if they desire it, as well as all other traditional forms of outdoor recreation they so desire, if such historical uses existed in the past. They should not have to hike into the outdoor recreational destinations in the Non-WSA Proposed Wilderness Regions if they do not want to or are unable or cannot afford such an activity.

- Hence Box Elder County's plan calls for continued historical public motorized or mechanized access to all traditional outdoor recreational destinations in all areas of the Non-WSA Proposed Wilderness Regions for all such segments of the public. Box Elder

County specifically opposes restricting outdoor recreation in the Non-WSA Proposed Wilderness Regions to just one form available for those who have enough time, money and athletic ability to hike into the destinations of the Non-WSA Proposed Wilderness Regions for a so-called “solitude wilderness experience”, or the like.

- Accordingly, all roads in the Non-WSA Proposed Wilderness Regions that are part of Box Elder County’s duly adopted transportation plan shall remain open to motorized travel. None of them should be closed other than by action of Box Elder County and the State of Utah. Box Elder County should have the continued ability to maintain and repair those roads, and where reasonably necessary, make improvements thereon. All trails in the Non-WSA Proposed Wilderness Regions that have been open to OHV use shall continue to remain open. Traditional levels of wildlife hunting and fishing should continue, consistent with sustainability of the resource at verified historical levels. Traditional levels of group camping, group day use and all other traditional forms of outdoor recreation, motorized and non-motorized, should continue.

6. Maintain and Keep Open All Roads in the Non-WSA Proposed Wilderness Regions That Appear on Box Elder County’s 2007 Transportation Map, and Provide For Such Additional Roads and Trails As May Be Necessary From Time to Time
Box Elder County’s transportation plan includes an official county-wide transportation map. The map is available to the public for viewing and copying, showing all public roads and trails maintained by the County.

- That portion of Box Elder County’s official transportation map which shows all public roads and trails in the Non-WSA Proposed Wilderness Regions is considered to be part of Box Elder County’s land use plan. This map is attached to and made part of this plan by this reference.
- Box Elder County plans to keep all such roads in the Non-WSA Proposed Wilderness Regions open and reasonably maintained and in good repair. Box Elder County will consult with the BLM about any required improvements to such roads, reserving the right to request court intervention and relief in the event Box Elder County and BLM cannot reach an agreement on such proposed improvements after reasonable efforts at consultation.
- Furthermore, additional roads and trails may be needed in the Non-WSA Proposed Wilderness Regions from time to time to facilitate reasonable access to a broad range of resources and opportunities throughout the Non-WSA Proposed Wilderness Regions, including livestock operations and improvements, solid, fluid and gaseous mineral operations, recreational opportunities and operations, search and rescue needs, other public safety needs, access to public lands for people with disabilities and the elderly, and access to Utah School and Institutional Trust Lands for the accomplishment of the purposes of those lands.

7. Manage the Non-WSA Proposed Wilderness Regions So As to Protect Prehistoric Rock Art, Three Dimensional Structures and Other Artifacts and Sites Recognized as Culturally Important and Significant By the State Historic Preservation Officer

- Reasonable mineral development in the Non-WSA Proposed Wilderness Regions can occur while at the same time protecting prehistoric rock art, three

dimensional structures and other artifacts, and sites recognized as culturally important and significant by the state historic preservation officer.

- Reasonable and effective stipulations and conditions to protect against damage to the above-described cultural resources should accompany decisions to issue mineral leases, permit drilling or permit seismic activities in the Non-WSA Proposed Wilderness Regions. Such drilling and seismic activities should not be disallowed merely because they are in the immediate vicinity of the above-described cultural resources if it is shown that such activities will not irreparably damage those resources.

8. Manage the Non-WSA Proposed Wilderness Regions So As to Not Interfere With The Property Rights of Private Landowners Located in The Non-WSA Proposed Wilderness Regions.

- There are parcels of private fee land, including School and Institutional Trust Land, located in the Non-WSA Proposed Wilderness Regions, including several in the Nine Mile Canyon area.
- Land management policies and standards on BLM land in the Non-WSA Proposed Wilderness Regions should not interfere with the property rights of private landowners in the Non-WSA Proposed Wilderness Regions to enjoy and engage in traditional uses and activities on their private property, consistent with controlling County zoning and land use laws.
- Nor should those landowners and their guests or clients be denied the right of motorized access to their private property consistent with past uses of those private land parcels.

9. Manage the Non-WSA Proposed Wilderness Regions So As to Not Interfere With The Fiduciary Responsibility of the State School and Institutional Trust Lands Administration ("SITLA") With Respect to Trust Lands Located in those Non-WSA Proposed Wilderness Regions.

- Scattered throughout the Non-WSA Proposed Wilderness Regions are sections of school and institutional trust land owned by the State of Utah and administered by SITLA in trust for the benefit of public schools and other institutions ("school trust lands"), as mandated in Utah's Enabling Act and State Constitution.
- As trustee, SITLA has a fiduciary responsibility to manage those school trust lands to generate maximum revenue there from, by making them available for sale and private development, and for other multiple and consumptive use activities such as mineral development, grazing, recreation, timber, agriculture and the like, all for the financial benefit of Utah's public schools and other institutional beneficiaries.
- Land management policies and standards on BLM land in the Non-WSA Proposed Wilderness Regions should not interfere with SITLA's ability to carry out its fiduciary responsibilities.
- Nor should SITLA be denied the right of motorized access to those school trust sections to enable SITLA to put those sections to use in order to carry out its fiduciary

responsibilities.

10. Managing Part or the entire Non-WSA Proposed Wilderness Regions for “wilderness” characteristics would violate FLPMA, Contradict The State’s Public Land Policy and Contradict The Foregoing Plans of Box Elder County For Managing The Non-WSA Box Elder County Non-WSA Proposed Wilderness Regions

- As Utah Code § 63-38d-401(6)(b) indicates, managing the Non-WSA Proposed Wilderness Regions under a “wilderness characteristics” management standard is not the State of Utah’s policy for multiple use-sustained yield management on public lands that are not wilderness or wilderness study areas. Nor is it Box Elder County’s. A so-called “wilderness characteristics” management standard for the Non-WSA Proposed Wilderness Regions is de facto wilderness management, now just by another name. It is incompatible with and would therefore frustrate and defeat the foregoing plans of Box Elder County for managing the Non-WSA Proposed Wilderness Regions. Box Elder County has formally taken a position that only 138,606 acres of BLM land in Box Elder County should be designated as wilderness. Those acres are situated within current WSAs, not within the Non-WSA Box Elder County Non-WSA Proposed Wilderness Regions. See the written Box Elder County, Utah Wilderness Proposal and supporting map, adopted 2003 and referenced in footnote 1 above.
- A “wilderness characteristics” management standard for the Non-WSA Proposed Wilderness Regions also violates FLPMA and the 2003 Settlement Agreement between Utah and Department of Interior.
- Managing Post-603 Lands¹ pursuant to the Interim Management Policy of 1979 (“IMP”) is inconsistent with BLM authority. Agreement p. 6 & 13.a;
- Managing Post-603 Lands to preserve their alleged wilderness character strays from the multiple use mandate in a manner inconsistent with FLPMA § Section 603 limited delegation of authority. Agreement p. 9 & 17;
- The 1999 Utah Wilderness Reinventory shall not be used to manage public lands “as if” they are or may become WSAs. Agreement p. 13 & 4;
- DOI/BLM will not establish, manage “*or otherwise treat*” Post-603 Lands as WSAs or as wilderness pursuant to the Section 202 process absent congressional authorization. Agreement p. 14 & 7;

11. Imposing Any of The Area of Critical Environmental Concern (“ACEC”) Designation Alternatives in Box Elder County Would Contradict Box Elder County’s Plan For Managing the Non-WSA Proposed Wilderness Regions

- It is Box Elder County’s policy that no part of the Non-WSA Proposed Wilderness Regions should be designated an (“ACEC”) unless it is clearly demonstrated that the proposed ACEC satisfies all the definitional requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1702(a).

¹

As that term is defined in the *Utah v. Norton* settlement agreement of April 11, 2003.

- The proposed ACEC is limited in geographic size and that the proposed management prescriptions are limited in scope to the minimum necessary to specifically protect and prevent *irreparable* damage to values that are objectively shown to be relevant and important, or to protect human life or safety from natural hazards.
- The proposed ACEC is limited only to areas that are already developed or used, or to areas where no development is required.
- The proposed ACEC designation and protection is necessary to protect not just a temporary change in ground conditions or visual resources that can be reclaimed or reversed eventually, (like reclaiming a natural gas well site after pumping operations are complete). Rather, the damage must be shown in all respects to be truly *irreparable* and justified on short term and long term horizons.
- The proposed ACEC designation and protection will not be applied redundantly over existing protections available under FLPMA directed multiple use sustained yield management.
- The proposed ACEC designation is not a substitute for a wilderness suitability determination, nor is it offered as a means to manage a non WSA for so-called “wilderness characteristics”.
- The foregoing summarizes the ACEC criteria of the State of Utah as well as Box Elder County. See Utah Code § 63-38d-401(8) (c). And the foregoing summarizes the criteria of FLPMA.

12. Including Any River Segment in the Non-WSA Proposed Wilderness Regions in the National Wild and Scenic River System Would Violate the National Wild and Scenic Rivers Act and Related Regulations, Contradict the State’s Public Land Policy, and Contradict the Foregoing Plans of Box Elder County For Managing the Non-WSA Proposed Wilderness Regions

It is Box Elder County’s policy that no river segment in Box Elder County should be included in the National Wild and Scenic River System unless:

- Water is present and flowing at all times.
- The water-related value is considered outstandingly remarkable within a region of comparison consisting of one of three physiographic provinces of the state, and that the rationale and justification for the conclusion are disclosed.
- BLM fully disclaims in writing any interest in water rights with respect to the subject segment.
- It is clearly demonstrated that including a segment in the NWSR system will not prevent, reduce, impair, or otherwise interfere with the state and its citizen’s enjoyment of complete and exclusive water rights in and to rivers of the state as determined by the laws of the state, nor interfere with or impair local, state, regional, or interstate water compacts to which the State or Box Elder County may be a party.

- The rationale and justification for the proposed addition, including a comparison with protections offered by other management tools, is clearly analyzed within the multiple-use mandate, and the results disclosed.
- It is clearly demonstrated that BLM does not intend to use such a designation to improperly impose Class I or II Visual Resource Management prescriptions.
- It is clearly demonstrated that the proposed addition will not adversely impact the local economy, agricultural and industrial operations, outdoor recreation, water rights, water quality, water resource planning, and access to and across river corridors in both upstream and downstream directions from the proposed river segment.

The foregoing also summarizes the wild and scenic river criteria of the State of Utah, Utah Code § 63-38d-401(8) (a), as well as the criteria of Box Elder County.

- There is no part of the Sevier River or any other waterways in the Non-WSA Proposed Wilderness Regions that meets the above criteria. Hence, no river segment in the Non-WSA Proposed Wilderness Regions should be included in the National Wild and Scenic River system.
- Nothing said herein or elsewhere by Box Elder County or its representatives is to be taken or intended as acknowledging or otherwise accepting that the WSR is a legitimate act pursuant to the authority of Congress as delegated by the States under the U.S. Constitution.

13. A Visual Resource Management Class I or II Rating for Any Part of the Non-WSA Proposed Wilderness Regions Would Contradict the State's Public Land Policy and Contradict Box Elder County's Plan for Managing the Non-WSA Box Elder County Non-WSA Proposed Wilderness Regions

- The objective of BLM Class I Visual Resource Management is not compatible with, and would therefore frustrate and interfere with Box Elder County's foregoing plan clarification for the Non-WSA Proposed Wilderness Regions.
- The objective of BLM Class II Visual Resource Management is generally not compatible with, and would therefore frustrate and interfere with Box Elder County's foregoing plan clarification for the Non-WSA Proposed Wilderness Regions. There are certain limited exceptions where a Class II objective would be compatible with Box Elder County's foregoing plan clarification. Such exceptions will be considered by Box Elder County on a case-by-case basis.
- Box Elder County's foregoing plan clarification for the Non-WSA Proposed Wilderness Regions is generally consistent with either Class III or Class IV, depending on the precise area.

13. The Nomination and or Designation of Public and Private Lands in the Non-WSA Proposed Wilderness Regions, Selected for Specific Uses, May have Permanent and Unintended Consequences on the Subject Lands and Surrounding Lands, and Should be reviewed by the Board of Box Elder County Planning Commission and Box Elder Commission.

- Lands within Box Elder County considered for any special designation and the impacts of the National Historic Preservation Act are an issue of concern for Box Elder County.
- Box Elder County's plan for balanced multiple use also incorporates the need to focus special attention and concern toward any impacts that proposed designations could have on private property use, the financial impacts to our citizens, and the potential loss of historic and traditional uses and lifestyles by layering multiple designations upon the land.
- Not only are the direct effects of the special designation a matter of concern to Box Elder County, but the fact that federal management guidelines allow buffer zones or "special management zones" or their equivalent around the sites, which could negatively impact nearby oil and gas development, is also a matter of concern to Box Elder County.

14. Federal Acquisition of Private Lands is Contrary to Policies and Plans of Box Elder County and the *Box Elder County General Plan*

- Box Elder County wishes to be fully involved as an affected entity in any process to consider the disposal of public lands or the acquisition of private lands to become public within the county's jurisdiction.
- The County recognizes that some tracts of public and private land are isolated, and since the County is the subject matter expert regarding the impacts to our economy, culture and customs from the transfer of ownership of these lands that are or may be identified for sale or purchase, County participation and local public input are essential.